Alternative Dispute Resolution and Online Dispute Resolution for EU consumers: Questions and Answers

I. THE BASICS

What is alternative dispute resolution (ADR) for consumers?

Alternative dispute resolution (ADR) refers to helping consumers resolve disputes with traders when they have a problem with a product or service which they bought.

A typical example is when the consumer complains about the quality of his or her purchase but the trader contests the consumer's claim and e.g. refuses to offer a repair or refund.

ADR entities are **out-of-court** (non-judicial) entities. They involve a **neutral party** (e.g. a conciliator, mediator, ombudsman, complaints board etc.) who proposes a solution or brings the parties together to help find a solution.

ADR mainly concerns individual cases, but can also handle several individual cases together when they are similar.

Alternative dispute resolution does not cover handling customer complaints directly by the trader (e.g. by their internal customer complaint department) or direct amicable settlements between the consumer and the trader.

What is online dispute resolution?

Online Dispute Resolution (ODR) means an alternative dispute resolution process aided by online technology. ODR entities allow consumers and businesses for their dispute to be handled online. This can help solve disputes especially for online purchases, where the consumer and the trader are often located far from each other.

How do ADR and ODR work?

Alternative dispute resolution (ADR) and online dispute resolution (ODR) work differently in EU countries:

- An ADR or ODR can be set up by **public authorities, by industry or in cooperation** between the public sector, industry and consumer organisations.

- **Funding** may be private (e.g. by industry), public or a combination of both.
- The geographical coverage is **mostly national**; in some cases ADR is decentralised at regional or local level.
- Some ADR entities are **sector-specific** (e.g. only handle disputes concerning travel or insurance or electricity provision) whereas some others accept cases concerning **any business sector**.
- For the vast majority of ADR entities, engaging in dispute resolution is **voluntary** for both parties.
- For 64% of ADR entities in the EU, **participation by the industry is voluntary**.
- For some ADR entities decisions are taken **collectively** (e.g. by boards), for others individually (e.g. by a mediator or an ombudsman).
- The nature of ADR outcomes may vary from **non-binding** recommendations to decisions which can be **binding** on the trader or on both parties.

What are the benefits of out-of-court dispute resolution?

Alternative dispute resolution mechanisms are typically **faster, cheaper and easier** to use for consumers than going to court:

- Most disputes submitted to ADR are decided **within 90 days**.
- The vast majority of ADR procedures are **free of charge** for consumers or **inexpensive** to use (below €50).
- The ADR process is generally **simpler** compared to court proceedings.

The existence of an effective out-of-court system can therefore be a **key motivator** for consumers to try to get their problems solved rather than leaving them unresolved, in particular when smaller amounts are at stake.

For businesses, effective out-of-court mechanisms can be key to managing their **customer relations and their business reputation**; they can also save them some costs of potential court cases.

II. STATE OF PLAY

What is the state of play in the EU countries?

In 2010, one in five consumers in the EU encountered problems when buying goods or services in the single market, leading to consumer losses estimated **at 0.4% of the EU's GDP.** Only a small fraction of them seek and get effective redress.

There are **currently more than 750 ADR entities in the EU**. They are highly diverse not only across the EU but even within countries.

In most Member States existing entities handle consumer disputes **only in some sectors** (in particular in the regulated sectors, including telecommunications, energy, financial services as well as travel and tourism). In some other countries, entities exist only in **specific regions**.

This means that – despite a large number of entities – there are **significant gaps in coverage.** In some countries (e.g. Slovakia and Slovenia) no recognised ADR entities appear to exist, or the system needs to be developed further (e.g. in Cyprus and Romania).

As a result, European **consumers do not enjoy the same level of access to out-of-court resolution** across the EU.

Only about half of the existing ADR entities are notified to the European Commission as meeting the **quality criteria** set in two Commission Recommendations (for more details on the EU action so far see below).

For most of the existing entities, consumer and business **awareness** – and hence **actual use** – are low.

Also, currently there is no obligation for national public **authorities to regularly monitor the use and effectiveness of the ADR entities**, in particular in terms of the Commission's quality criteria (such as suitable qualifications, impartiality, transparency, effectiveness and fairness).

As for online dispute resolution, very few existing entities in the EU offer the option of handling the entire dispute resolution process online.

How does ADR work today when shopping from another EU country?

When EU consumers run into problems when buying from a trader based in another EU country, they can ask for help and assistance of the European Consumers' Centres Network (ECC-Net).

ECCs are not dispute-resolution entities themselves, they can first try to solve the problem amicably and, if that does not work, help refer the case to another organisation, including a competent ADR entity in the trader's country – provided that it exists. In 2010, only 9% of ECC cases which could not be settled amicably were referred to ADR entities.

Why does the EU promote ADR?

Well-functioning ADR across the EU will boost consumer confidence to seize the opportunities that the Single Market offers them in terms of choice and better prices. This also includes buying online from other EU countries.

More cross-border commerce in the EU will also open up new opportunities for businesses and help drive economic growth.

In the Single Market, alternative dispute resolution can only work well for those shopping from other EU countries if quality entities exist at national level. This should build on existing ADR entities, thus respecting national legal traditions.

To ensure equal levels of access to consumer redress, quality ADR entities should be available for all types of consumer disputes in the Single Market, and consumers as well as traders should be aware of such possibilities.

What has been done so far at EU level?

The European Commission issued two recommendations (in 1998 and 2001), defining **common principles for efficient and effective ADR entities**.

National authorities have informed the Commission about those national ADR entities which they consider in conformity with these principles. The Commission keeps a database of such 'notified' ADR entities.

However, 40% of the existing ADR entities are not notified in this way.

For some specific sectors (e.g. telecommunications, energy, consumer credit, or payment services) EU laws oblige Member States to set up ADR mechanisms.

For some other sectors (e.g. e-commerce directive, postal services) EU laws merely encourage it.

The EU Commission also co-finances the European Consumer Centres' Network (ECC-Net) to help consumers to access the appropriate ADR entity in another Member State in case of cross-border disputes.

Another EU-wide network, **FIN-NET**, brings together ADR entities which handle cross-border disputes between consumers and financial service providers.

III. THE COMMISSION'S NEW PROPOSALS

What types of disputes are covered by the proposals?

The proposed Directive on Alternative Dispute Resolution for Consumers ('ADR Directive') will **ensure that quality out-of-court entities exist to deal with any contractual dispute between a consumer and a business**.

Consumers will be able to submit their consumer contractual disputes to an ADR, wherever they shop in the EU (i.e. whether in their home country or in another EU country), whatever they buy, and however they buy it (online or offline).

The Regulation on Online Dispute Resolution ('ODR Regulation') will create **a single EU-wide online platform** for online shoppers buying from another EU country and traders to resolve their contractual disputes online.

What main changes will the proposals bring in the EU when adopted?

Firstly, **gaps in coverage will be eliminated** because it will be possible to submit any contractual dispute involving an EU consumer and an EU-based trader to an alternative dispute resolution entity. Member States can ensure this either by broadening the competence of existing entities or by creating new ones if needed.

All ADR entities in the EU will need to respect basic quality criteria, including suitable qualifications, impartiality, transparency, effectiveness (the procedure generally not exceeding 90 days), and fairness. National authorities will monitor the respect of these quality principles.

Online shoppers buying from other EU countries as well as traders selling abroad within the EU will be able to **resolve their contractual disputes directly online** thanks to a single EU-wide online dispute resolution platform ('ODR platform'). This single point of entry will be a user-friendly interactive website, accessible in all official languages of the EU and free of charge.

Traders will also be required to provide consumers with **relevant and complete** information about the relevant ADR entities available and the ODR platform.

How will the ODR platform work in practice?

The platform will be linked electronically to the national ADR entities which have been set up and notified to the Commission in line with the new rules. National ADR entities will remain responsible for handling individual contractual disputes which the platform refers to them.

The ODR system will be effective thanks to a **set of common rules**. These will include the role of national contact points acting as ODR facilitators in the respective country, and the requirement to **deliver a solution within 30 days**.

Will ADR be mandatory for traders?

Most ADR entities today are voluntary. The voluntary nature allows for flexibility and speed.

The Commission's proposal contains **incentives to promote the use of ADR by traders**. In particular, traders will have to inform consumers whether or not they commit to using ADR to solve consumer disputes.

Moreover, under the proposed package EU countries will be free to create their national rules to make the participation of traders in ADR procedures mandatory or their outcome binding on traders.

How will Member States ensure full ADR coverage?

Effective consumer redress must respect local realities and each country needs a necessary margin to decide how best to ensure full ADR coverage in its territory.

Therefore, the proposed ADR Directive **builds on what already exists nationally**. It will respect the great variety of ADR entities that exists across the EU and will <u>not</u> oblige national authorities to create a specific ADR entity for each retail sector.

Countries with ADR entities which cover many different sectors will be free to keep them or create completely new ones, as long as the entities respect the quality principles defined in the proposal.

One option to ensure full coverage is, for example, creating a 'residual' ADR entity that will handle the types of contractual disputes which no other specific mechanism deals with.

The proposals also oblige Member States to encourage setting up pan-European ADR entities.

The EU-wide online dispute resolution system will build on national ADR entities.

What will be the benefits for consumers and businesses?

Quality ADR entities will become **available for all consumer contractual disputes across the EU**.

Consumers will receive **complete information** about the ADR competent to deal with their contractual dispute in all relevant documents.

Online shoppers buying from other EU countries and traders selling abroad in the EU will be able to **resolve their contractual disputes directly online**.

According to estimates, if EU consumers can rely on well-functioning and transparent ADR for all their disputes they could **save around €22.5 billion**, corresponding to 0.19% of EU GDP.

Access to quality ADR will help businesses to manage their consumer relations and their business reputation. It will also offer them savings. According to estimates, **EU businesses can save up to €3 billion** when using ADR instead of going to court.

When will the proposal become law?

The European Parliament and the Council have already expressed their commitment to adopting the legislative package on ADR and ODR **by the end of 2012**, as part of coordinated efforts to re-launch the Single Market.

More Information

Full text of the proposals, all policy background and the database of national ADR entities notified to the Commission can be found at:

http://ec.europa.eu/consumer-adr

See also IP/11/1461